

# ENVIRONMENTAL CONSEQUENCES OF THE KAKHOVKA H.P.P. DESTRUCTION IN UKRAINE: CHALLENGE AND OPPORTUNITY FOR INTERNATIONAL JUSTICE

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## ABSTRACT

This article provides a legal analysis of the destruction of the Kakhovka hydroelectric power plant dam that took place on June 6, 2023 in Russian-occupied Ukraine. Highlighting the role of Russian troops in this act, the authors equate its consequences to the 1986 Chernobyl disaster. The dam's explosion marks a severe environmental catastrophe amidst ongoing high-intensity hostilities in Ukraine, threatening vast natural areas with environmental disaster. Authors discuss the broad environmental and cross-border impacts, particularly in the Black Sea basin, and review the international environmental conventions breached by this incident. The event aligns with the concept of ecocide, a term not yet fully established in international law, but increasingly recognized. The article emphasizes the possibility of prosecuting those responsible for extensive, long-term, and severe environmental damage under existing legal frameworks. Focusing on international legal instruments, the article explores the grounds for international criminal responsibility and examines the jurisdictions that could address the ecocide, including the International Court of Justice, the International Tribunal for the Law of the Sea, a proposed Special Ad-Hoc Tribunal, and the International Criminal Court (ICC). The authors argue that the Kakhovka dam case presents the ICC with a unique opportunity to enforce international norms against severe environmental damage during hostilities, as outlined in Article 8.2b (iv) of the Rome Statute. They conclude that the ICC's involvement would be a significant step in proving its capability to address war crimes involving environmental destruction.

**Keywords:** Ecocide; International Criminal Court; Kakhovka hydroelectric power plant; Environmental disaster; War crimes; Ukraine; Russian aggression

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## **1. CHRONOLOGY OF THE DEMOLITION OF THE KAKHOVKA HYDROELECTRIC DAM AND POWER STATION**

The Kakhovka hydroelectric power station was built in the 1950s during the Cold War, when the USSR faced the fear of a nuclear attack, and all most important infrastructures were built to withstand a nuclear attack. It was virtually impossible to destroy the dam from the outside. The only way to blow it up was from the inside. The Kakhovka power station was occupied by the Russian Federation from the very first days of the large-scale Russian invasion of Ukraine in March 2022. In October 2022, the hydropower plant was mined, as reported by Ukrainian intelligence services and Russian state media. On 20 October 2022, the President of Ukraine, Volodymyr Zelenskyy, in a message to the European Council, stressed that a terrorist attack was being prepared and called for an international observation mission to be sent to the hydropower plant<sup>1</sup>. A week before the terrorist attack, on 30 May 2023, the Russian government adopted decree that, in particular, prohibited until 1 January 2028 any technical investigation of accidents at hydraulic structures that occurred as a result of hostilities, sabotage, or terrorist acts in the territories of the so-called Donetsk People's Republic, Luhansk People's Republic, and the temporarily occupied Zaporizhzhia and Kherson regions, which Russia had already incorporated into its Constitution.<sup>2</sup>

Between 02:34 and 02:54 hours on 6 June 2023, the dam at the Kakhovka hydroelectric power station in the temporarily occupied territory of the Kherson region exploded and seismic activity was recorded by the Norwegian organisation, NORSAR.<sup>3</sup> The initial reaction of the world's media was to report yet more evidence, far from isolated, of the multiple environmental consequences of the Russia aggression against Ukraine.<sup>4</sup> Moreover, Russia, like always, immediately filed a statement with the International Criminal Court (ICC) regarding its non-involvement in this act of terrorism, accusing Ukraine of having attacked the dam with missiles.

The key results of this research comprise of such findings. The research concludes that the dam's destruction meets the criteria for ecocide due to its severe and long-lasting environmental impact. The authors argue for the

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<sup>1</sup> Volodymyr Zelenskyy, 'Russians Have Mined the Kakhovka Hydroelectric Power Station, an International Observation Mission is Needed' (Ukrinform, 22 October 2022) <<https://www.ukrinform.ua/rubric-ato/3597629-zelenskij-rosiani-zaminuvali-kahovsku-ges-potribna-miznarodna-sposterezna-misia.html>> accessed 19 May 2024.

<sup>2</sup> Decree of the Government of the Russian Federation of 30 May 2023 No 873 'On the specifics of application in the territories of the Donetsk People's Republic, the Lugansk People's Republic, the Zaporizhzhia region and the Kherson region of the provisions of the legislation of the Russian Federation in the areas of industrial safety of hazardous facilities and ensuring the safety of hydraulic structures' (in Russian), <<https://base.garant.ru/406965902/#:~:text=>>> accessed 19 May 2024.

<sup>3</sup> NORSAR, 'Seismic signals recorded from an explosion at the Kakhovka Dam in Ukraine June 6th, 2023' (2023), <<https://www.norsar.no/in-focus/seismic-signals-recorded-from-an-explosion-at-the-kakhovka-dam-in-ukraine>>.

<sup>4</sup> Colloque International, 'Aggression de l'Ukraine par la Russie: conséquences pour l'environnement Solidarité écologique et conflits armés, La Rochelle, 05 Décembre 2022' <<https://videos.univ-lr.fr/droit-economie-gestion/colloque-international-agression-de-lukraine-par-la-russie-consequences-pour-lenvironnement/>>.

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prosecution of individuals responsible under both national and international law, specifically highlighting Article 8.2b (iv) of the Rome Statute, which pertains to war crimes involving environmental destruction. The study advocates for the ICC's involvement as a significant step in addressing war crimes related to environmental damage. It also discusses the potential roles of the ICJ and a Special ad-hoc Tribunal. This research also emphasizes the need for comprehensive documentation and evidence collection, involving international experts, to build a robust case for prosecution. These findings underscore the potential for advancing international legal standards concerning environmental crimes.

## **2. METHODOLOGY**

This article deploys a legal analysis approach to investigate the destruction of the Kakhovka hydroelectric power plant and dam, with a focus on the qualification of the event as an environmental disaster. The central aim of this article is to examine the destruction of the Kakhovka hydroelectric power station dam and its ecological consequences, with a view to establishing the legal grounds for prosecuting the perpetrators under international criminal law as war crimes. Given the lack of environmentally oriented cases filed in the International Criminal Court, the authors intend to highlight the promising avenues for ICC to involve in investigating such offenses, as stipulated by the Rome Statute and international legal norms.

The authors utilize a combination of data sources, including international legal instruments, national legislation of Ukraine, and reports of international bodies. The research methodology includes chronological documentation detailing the timeline of events leading to the dam's destruction; legal analysis assessing the incident under various international legal frameworks, including the Geneva Conventions and the Rome Statute of the International Criminal Court (ICC); a jurisdictional analysis exploring potential legal venues for prosecution, such as the ICC, the International Court of Justice (ICJ) and the proposed Special Ad Hoc Tribunal; and a comparative analysis drawing parallels with other significant environmental disasters to underscore the severity of the incident.

The study is grounded in an extensive review of international legal principles, national legislation, and the evolving discourse on environmental crimes. It references ongoing debates and proposed definitions of ecocide within the context of international law. For instance, it relies heavily on established international conventions and treaties such as the Geneva Conventions, the Rome Statute of the International Criminal Court (ICC), the United Nations Convention on Biological Diversity, and the Ramsar Convention on Wetlands. International scientific conferences and symposia have been instrumental in advancing the discourse on ecocide. These gatherings have brought together legal experts, environmental scientists, and policymakers to discuss and refine the concept of ecocide. Authors took part in such events and recorded observations. Significant events included:

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Budapest Inter-Ministerial Conference on Environment and Health, Council of Europe Network for Human Rights Education HELP for Lawyers, 14th Conference of the Parties (COP14) to the Ramsar Convention. The authors analysed ecocide definitions, taking into consideration the studies of Rob White “Conceptions of ecocide and challenges for social transformation”<sup>5</sup>, Eliana Cusato and Emily Jones “The ‘imbroglio’ of ecocide: A political economic analysis”<sup>6</sup>, Adam Branch & Liana Minkova “Ecocide, the Anthropocene, and the International Criminal Court”.<sup>7</sup> This article leverages these scientific discussions and theoretical developments to argue for the classification of the Kakhovka dam destruction as ecocide and the prosecution of those responsible under international law.

### **3. REAL IMPACTS AND THREATS**

The spillage of 18 million cubic metres of water, which could no longer be contained due to the destruction of the infrastructure, resulted in:

#### ***1) Environmental damage***

The flooding of 600 km<sup>2</sup> in 80 localities in the Kherson, Dnipro and Zaporizhzhia regions of Ukraine, accompanied by pollution (at least 150 tonnes of machine oil were spilled into the Dnipro river on the first day, and a further 300 tonnes are expected to be spilled<sup>8</sup>). Exceptional ecosystems were found in the flood zone, the preservation of which has led to the creation of protected natural sites, including the Black Sea Biosphere Reserve, which is part of the UNESCO world network, the wetlands protected by the Ramsar Convention, and the national parks of Nyzhniodniprovsky, Svyatoslav's Biloberezhzhia, Oleshky Sands and Kinburn Spit. Dozens of protected areas, nature reserves and natural monuments, including botanical, landscape, zoological, ornithological and forest sites, were also hit by the floods. In addition, the floods caused a significant rise in the water table throughout the southern region of Ukraine. This means an increase in soil moisture and salinity, which is detrimental to vegetation. In particular, this phenomenon will lead to the permanent disappearance of the remnants of natural forests on the sands of the Dnipro. Hundreds of species of living organisms have died and continue to die, including 71 animal species and 32 endemic plants on the Red List of the International Union for Conservation of Nature (IUCN) and the Red Book of Ukraine, including colonies of oysters and numerous

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<sup>5</sup> White, R. ‘Conceptions of ecocide and challenges for social transformation. Current Issues in Criminal Justice’, (2023) 35(3) Current Issues in Criminal Justice 312–323.  
<<https://doi.org/10.1080/10345329.2023.2203272>>.

<sup>6</sup> Eliana Cusato and Emily Jones, ‘The ‘imbroglio’ of ecocide: A political economic analysis’, (2024) 37 Leiden Journal of International Law 42–61. <<https://doi.org/10.1017/S092215652300046>>.

<sup>7</sup> Branch, A. & Minkova, L., ‘Ecocide, the Anthropocene, and the International Criminal Court’ (2023) 37(1) Ethics and International Affairs.

<sup>8</sup> ‘Following the explosion at the Kakhovka hydroelectric power station, 150 tonnes of machine oil spilled into the Dnipro river’ Ukrayinska Pravda (Ukraine, 6 June 2023) (in Ukrainian)  
<<https://www.pravda.com.ua/news/2023/06/6/7405543/>>.

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species of fauna.<sup>9</sup> The consequences of the rapid flooding were fatal for small land animals, because unlike birds or large mammals, they were physically unable to escape the water that flooded their habitats.

The destruction of the dam at the Kakhovka hydroelectric power station will have major consequences for the Black Sea ecosystem as a whole, as the water from the rivers in the flooded areas will be transported with large quantities of thousands of dead animals and birds, houses and other infrastructure, waste from destroyed sewage systems and cesspits, fertilisers and other chemical residues, mines and other munitions, cemeteries and cattle pens. The sediments at the bottom of the Kakhovka reservoir contain pollutants that have accumulated over several decades as a result of emissions from industrial plants, as well as plant protection products and fertilisers. As a result of the strong release of freshwater into the Black Sea, its salinity is decreasing and fish are moving away from the coast. As a result, seabirds such as seagulls, cormorants and terns find themselves without food. Hundreds of islands, floodplain forests and steppes, floodplain meadows and slopes, with all their inhabitants, are washed away.

It is worth noting the international nature of this pollution, as other countries in the Black Sea region will feel the effects of the poisoning of the sea at the same time as Ukraine, given that the current along the coast runs counter-clockwise. And the flow that first reached Odesa will reach Romania, Bulgaria, Turkey and, later, the aggressor state itself, in one form or another<sup>10</sup>. According to the international group of experts, the estimated environmental damage already caused by the destruction of the Kakhovka hydroelectric dam amounts about 4 billion dollars<sup>11</sup>. And, it is expected that the total damage caused to Ukraine's ecosystems will exceed the direct damage caused to infrastructure and will be long-lasting.<sup>12</sup>

### *2) Humanitarian disaster*

The explosion of the hydroelectric power station in the flooded area caused a humanitarian disaster for hundreds of thousands of people, mainly in the occupied territory, where the occupying authorities not only failed to evacuate civilians, but also created all kinds of obstacles to the humanitarian

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<sup>9</sup> 'A disaster on a global scale: what will be the environmental consequences of the terrorist attack on the Kakhovka nuclear power plant', UNIAN (Ukraine, 11 June 2023) <<https://www.unian.ua/ecology/katastrofa-planetarnogo-masshtabu-yakimi-budut-ekologichni-naslidki-teraktu-na-kahovski-ges-12289350.html>>.

<sup>10</sup> 'An ecology expert has warned of terrible pollution of the Black Sea due to the explosion of the Kakhovka dam' UNIAN (Ukraine, 7 June 2023) (in Ukrainian) <<https://www.unian.ua/ecology/chorne-more-novini-sogodni-ekolog-poperediv-pro-zhahlive-zabrudnennya-cherez-pidriv-kahovskoji-ges-12285582.html>>.

<sup>11</sup> 'The amount of environmental damage caused by the explosion at the Kakhovka nuclear power plant has been announced: the figure is impressive' UNIAN (Ukraine, 30 June 2023) (in Ukrainian) <[https://www.unian.net/ecology/ozvucheno-sumu-zbitkiv-dovkilliyu-cherez-pidriv-kahovskoji-ges-cifra-vrazhaye-12312369.html?utm\\_source=viber&utm\\_medium=viber&utm\\_campaign=viber\\_site-dam](https://www.unian.net/ecology/ozvucheno-sumu-zbitkiv-dovkilliyu-cherez-pidriv-kahovskoji-ges-cifra-vrazhaye-12312369.html?utm_source=viber&utm_medium=viber&utm_campaign=viber_site-dam)>.

<sup>12</sup> Olga Popova, 'Solidarity against environmental damage in "civilized" homes' Dzerkalo Tyzhnia (Ukraine, 12 March 2023) (in Ukrainian) <<https://zn.ua/ukr/reforms/ne-dopustiti-ekolohichnoho-vidstupu.html>>.



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missions of the Ukrainian side and international organisations. In economic terms, the Kakhovka power station provided irrigation for the whole of southern Ukraine, including occupied Crimea, and supplied drinking water to 880,000 people; its destruction, therefore, affected and threatened to wipe out major industrial centres in southern Ukraine, whose production processes require large quantities of water. According to the domino effect, these processes could lead to increased social tensions, unemployment, a fall in living standards, increased migration, and a deterioration in the demographic situation in the region.<sup>13</sup>

### *3) Nuclear threats and blackmail*

The cooling water for the Zaporizhzhya nuclear power plant came from the Kakhovka reservoir, threatening Europe's nuclear safety. We have already discussed the potentially catastrophic consequences of the Russian Federation using Ukraine's nuclear facilities as a weapon<sup>14</sup>. However, the threat of destruction of the plant has recently increased significantly because of its being mined by Russian troops.<sup>15</sup>

These facts make it easy to identify the signs that constitute the elements of the crime of ecocide, namely the illegality or recklessness of the acts committed in the knowledge of the significant likelihood of serious, widespread, or long-term damage to the environment caused by those acts.<sup>16</sup>

## 4. LEGAL ASSESSMENT OF THE SITUATION RELATING TO THE KAKHOVKA HPP DAM DESTRUCTION

It should be noted that the terrorist act in question blatantly violated a large number of international environmental treaties. These include:

- United Nations Convention on Biological Diversity<sup>17</sup> (signed on 5 June 1992, ratified by Ukraine on 29 November 1994, entered into force for Ukraine on 7 February 1995; ratified by the Russian Federation in 1995, entered into force for Russia on 4 July 1995) and the Cartagena Protocol on Biosafety to the said Convention (signed on 29 January 2000, Ukraine acceded to it on 12 September 2002; Russia is not a party to the Protocol);

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<sup>13</sup> 'Explosion of the dam at the Kakhovka hydroelectric power station: four categories of consequences and an action plan' Ukrayinska Pravda (Ukraine, 14 June 2023) <<https://www.epravda.com.ua/columns/2023/06/14/701156/>>.

<sup>14</sup> Nataliia Malysheva and Anna Hurova, 'Le monde entier a peur du "bouton nucléaire" de Poutine, mais sous-estime une autre menace nucléaire déjà réelle', (2022) 2 *Revue juridique de l'environnement* 243-246.

<sup>15</sup> 'The Zaporizhzhya nuclear power plant has been mined around its perimeter and inside: the IAEA describes the situation with the pond' TSN (Ukraine, 22 June 2022) <<https://tsn.ua/ato/zaporizka-aes-zaminovana-za-perimetrom-ta-vseredini-v-magate-povidomili-scho-zi-stavkom-2355487.html>>.

<sup>16</sup> 'Stop écocide' <<https://www.stop-ecocide.fr/>>.

<sup>17</sup> 'The Convention on Biological Diversity, an international treaty for a sustainable future' <<https://www.cbd.int/>>.

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- Convention on Wetlands of International Importance especially as Waterfowl Habitat<sup>18</sup> (signed on 2 February 1971, entered into force on 12 December 1975, Ukraine and Russia are both parties to the Convention on the basis of succession after the USSR (Ukraine since 1996<sup>19</sup>, Russia since 1994<sup>20</sup>);
- Espoo Convention on Environmental Impact Assessment in a Transboundary Context (signed on 25 February 1991, ratified by Ukraine on 19 March 1999; not ratified by Russia)<sup>21</sup>;
- United Nations Framework Convention on Climate Change<sup>22</sup> (adopted on 9 May 1992, ratified by Ukraine on 29 October 1996; by Russia on 28 December 1994), and the Paris Climate Agreement (adopted on 12 December 2015, ratified by Ukraine on 14 July 2016; by Russia on 07 October 2019<sup>23</sup>);
- United Nations Convention on the Law of the Sea<sup>24</sup> (Part XII "Protection and preservation of the marine environment") adopted in Montego Bay on 10 December 1982, entered into force on 16 November 1994, Ukraine ratified the Convention on 3 June 1999, Russia - on 12 March 1997);
- Convention on Transboundary Watercourses and International Lakes<sup>25</sup> (concluded on 17 March 1992; Ukraine acceded on 1 July 1999<sup>26</sup>; Russia on 2 November 1993<sup>27</sup>);

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<sup>18</sup> 'Convention on Wetlands of International Importance especially as Waterfowl Habitat' <<https://en.unesco.org/about-us/legal-affairs/convention-wetlands-international-importance-especially-waterfowl-habitat>>.

<sup>19</sup> 'Convention on Wetlands of International Importance especially as Waterfowl Habitat' <[https://zakon.rada.gov.ua/laws/show/995\\_031#Text](https://zakon.rada.gov.ua/laws/show/995_031#Text)>.

<sup>20</sup> 'Ministerial Decree no. 1050 regulating the implementation of Russia's obligations under the Convention on Wetlands of International Importance (Ramsar Convention 2 February 1971)' <<https://leap.unep.org/en/node/30098>>.

<sup>21</sup> 'Convention on Environmental Impact Assessment in a Transboundary Context' <<https://unece.org/environment-policy/publications/convention-environmental-impact-assessment-transboundary-context>>.

<sup>22</sup> 'Climate change. The United Nations website' <<https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change>>.

<sup>23</sup> 'List of signatories to the Paris Climate Agreement' <[https://fr.wikipedia.org/wiki/Liste\\_des\\_signataires\\_de\\_l%27Accord\\_de\\_Paris\\_sur\\_le\\_climat](https://fr.wikipedia.org/wiki/Liste_des_signataires_de_l%27Accord_de_Paris_sur_le_climat)>.

<sup>24</sup> 'United Nations Convention on the Law of the Sea Montego Bay, 10 December 1988' <<https://treaties.un.org/doc/Publication/MTDGS/Volume%20II/Chapter%20XXI/XXI-6.fr.pdf>>.

<sup>25</sup> 'Convention on the Protection and Use of Transboundary Watercourses and International Lakes' <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-5&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5&chapter=27&clang=_en)>.

<sup>26</sup> Про приєднання України до Конвенції про охорону та використання транскордонних водотоків та міжнародних озер : Закон України (On the Accession of Ukraine to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes: Law of Ukraine) <<https://zakon.rada.gov.ua/laws/show/801-14#Text>>.

<sup>27</sup> 'Convention on the Protection and Use of Transboundary Watercourses and International Lakes' <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-5&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5&chapter=27&clang=_en)>.

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- Convention on the Protection of the Black Sea against Pollution<sup>28</sup> (signed on 21 April 1992, ratified by Ukraine on 14 April 1994, Russia on 15 January 1994) and its Protocol on the Conservation of the Biodiversity and Landscape of the Black Sea (14 June 2000);
- Bonn Convention on the Conservation of Migratory Species of Wild Animals<sup>29</sup> (on 23 June 1979, Ukraine acceded on 19 March 1999, as of 1 March 2022 Russia was not a party to the Convention) and its agreements: the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) (1 November 1999) and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Ocean (ACCOMBAS) (1 June 2001);
- Bern Convention on the Conservation of European Wildlife and Natural Habitats<sup>30</sup> (signed on 19 September 1979, entered into force on 1 June 1982; ratified by Ukraine on 29 October 1996 with reservations; Russia is not a signatory to the Convention and has observer status at meetings of its Executive Committee).

Unfortunately, the governing bodies of the environmental conventions, whose standards were violated by the destruction of the dam at the Kakhovka hydroelectric power station, did not react appropriately to the terrorist act committed by Russia, as well as to all the other environmental crimes committed by Russia on the territory of a neighbouring state.

The only exception was the Ramsar Convention on Wetlands of International Importance. It should be noted that the area affected by the consequences of the terrorist act in question and other environmental destruction in Ukraine resulting from armed aggression included wetlands under the protection and control of this Convention. Therefore, even before this tragedy, on 12 November 2022, the 14th Conference of the Parties to the Ramsar Convention, at the initiative of Ukraine and with the support of 35 co-sponsoring States, adopted Resolution 18.24 "The Ramsar Convention's response to the environmental emergency in Ukraine related to the Destruction of Ramsar Wetlands of International Importance as a result of Russian aggression".

The devastating impact of Russian aggression on the environmental situation in Ukraine, including the violation of the ecological status of 16 Ramsar sites and the potential damage to 15 others, has been recognised. It is clear that the number of these sites has increased significantly since the explosion of the Kakhovka hydroelectric dam. The resolution was passed by 50 delegations with 7 against. This document can be considered

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<sup>28</sup> 'The Commission on the Protection of the Black Sea Against Pollution Permanent Secretariat (blacksea-commission.org)' <<http://www.blackseacommission.org/Official%20Documents/The%20Convention/Overview/>>.

<sup>29</sup> 'Convention on the Conservation of Migratory Species of Wild Animals' <<https://www.cms.int/en/parties-range-states>>.

<sup>30</sup> 'Convention on the Conservation of European Wildlife and Natural Habitats' <<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=104>>.



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unprecedented for international sectoral treaties, as it addresses geopolitical aspects in addition to environmental ones. In particular, it contains a direct reference to the specific source of the aggression that caused damage to the protected area, as well as a reminder of the obligations of the parties to respect the exclusive sovereign rights of the States on whose territory the wetland is located, and a demand that Russia immediately, completely and unconditionally withdraw its armed forces from the territory of Ukraine beyond its internationally recognised borders.<sup>31</sup>

It should be noted that since February 2022, numerous forums have been held under the auspices of other environmental conventions whose standards have been violated by the Russian Federation in Ukraine. However, none of them has included a discussion of the relevant issues on its agenda. In particular, the 15th Conference of the Parties to the United Nations Convention on Biological Diversity (Montreal Biodiversity Conference), which was held in Canada from 7 to 19 December 2022<sup>32</sup>, discussed many topical issues concerning biodiversity conservation and adopted a number of important decisions, including the Kulminsko-Montreal Global Biodiversity Conservation System. The document contains 4 long-term targets (up to 2050) and 23 short-term targets (up to 2030). One of the objectives by 2030 is to protect 30% of land and 30% of marine areas with the best-preserved ecosystems. Other ambitious targets include restoring at least 30% of degraded ecosystems and managing them through a network of protected areas. However, neither this document nor the 35 decisions of the Conference of the Parties paid any attention to the degradation processes in the field of biodiversity associated with the destructive impact of Russia's military aggression in Europe.

On the other hand, the European institutions reacted swiftly to the Kakhovka tragedy. On 15 June 2023 the European Parliament adopted the resolution "On the Sustainable Reconstruction and Integration of Ukraine into the Euro-Atlantic Community" (2023/2739 RSP)<sup>33</sup>, which states in paragraph 4 that the European Parliament condemns in the strongest terms the destruction of the Kakhovka dam by Russia on 6 June 2023, which caused an environmental disaster and ecocide in Ukraine and constitutes a war crime. It reiterates that all those responsible for these war crimes, including the destruction of the dam, must be held accountable in accordance with international law. It welcomes the rapid activation of the EU Civil Protection Mechanism and supports the investigation by the International Criminal Court into the destruction of the Kakhovka dam. European Parliament condemns Russia's previous acts of ecocide against the flora and fauna of

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<sup>31</sup> 'Summary of the fourteenth meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands: Vol. 17 No. 54, 5-13 November 2022. Earth Negotiations Bulletin' <<https://enb.iisd.org/sites/default/files/2022-12/enb1754f.pdf>>.

<sup>32</sup> 'Conference of the Parties to the Convention on Biological Diversity, 7-19 December 2022' <<https://www.cbd.int/conferences/2021-2022/cop-15/documents>>.

<sup>33</sup> 'European Parliament resolution on the sustainable reconstruction and integration of Ukraine into the Euro-Atlantic community (2023/2739(RSP))' <[https://www.europarl.europa.eu/doceo/document/B-9-2023-0277\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2023-0277_EN.html)>.

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Ukraine, including the deforestation of Ukrainian forests, the mining of vast areas and the poisoning of air and water resources (paragraph 5 of the resolution).

Resolution 2506 (2023) of the Parliamentary Assembly of the Council of Europe, "The political consequences of the Russian Federation's war of aggression against Ukraine", adopted on 22 June 2023 in Strasbourg, is part of an even broader context of condemnation of Russia's actions on Ukrainian territory.<sup>34</sup> The very first paragraphs of the resolution state that the full extent of the consequences of the destruction of the Kakhovka dam is not yet known. It assesses the reasons for this terrorist attack by Russia - the delay in the Ukrainian counter-offensive, which confirms the barbarity of Putin's military machine and constitutes a war crime and ecocide.

In particular, the document highlights the link between the aggressive war unleashed by Russia and the expected setback in achieving more than half of the 17 sustainable development goals, including the climate objectives. The document emphasises the need to guarantee the inevitability of punishment for those responsible for Russia's aggressive actions in Ukraine, supports the idea of creating a Register of the damage caused by the said aggression that was established according to the Law, 2923-IX (23.02.2023)<sup>35</sup>. Furthermore, international act proclaims an international compensation mechanism using confiscated Russian assets to immediately pay for the damage caused by the war in Ukraine. It also declares the need to expedite negotiations on the creation of a special international criminal court to investigate the crime of aggression against Ukraine. This Register is managed according to the Rules of procedure of the conference of participants of the register of damage caused by the aggression of the Russian Federation against Ukraine<sup>36</sup> by the Conference of Participants (COP), where each Participant and Associate Member is represented, is the top governing body of the Register. It holds the overall responsibility for the fulfilment of the Register's mandate.

It is also worth mentioning that at the annual conference of the Council of Europe Network for Human Rights Education HELP for Lawyers, held on 6 and 7 July 2023 in Strasbourg (125 participants from 49 countries), one of the sessions was devoted to the Council of Europe's response to Russian

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<sup>34</sup> 'The political consequences of the Russian Federation's war of aggression against Ukraine. Council of Europe/Parliamentary Assembly. Resolution 2506 (2023). Provisional version' <<https://pace.coe.int/en/files/32994/html>>.

<sup>35</sup> 'On Compensation for Damage and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine: Law of Ukraine' <<https://zakon.rada.gov.ua/laws/show/2923-20#Text>>.

<sup>36</sup> 'Rules of Procedure of the Conference of Participants of the Register of Damage caused by the aggression of the Russian Federation against Ukraine' <<https://rd4u.coe.int/documents/358068/372244/RoP+Conference+of+Participants.pdf/5f07533c-2ee6-198a-7f65-3519c0641560?t=1708702170016>>.

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aggression in Ukraine, including in the environmental field.<sup>37</sup> And at the 7th Inter-ministerial Conference on Environment and Health, held in Budapest from 5 to 7 July 2023, 28 countries joined Ukraine's Declaration on the devastating consequences of the explosion at the Kakhovka hydroelectric power plant. "We condemn Russia's aggressive war against Ukraine, which directly contradicts the objectives of our conference: it threatens climate resilience, biodiversity, environmental cleanliness and creates direct cross-border dangers and risks that we face today. We insist that Russia must be held accountable for any violation of international law in or against Ukraine. In this regard, we believe that Russia must bear the legal consequences of all its internationally wrongful actions, including compensation for damage caused by these actions", the statement said.<sup>38</sup>

### 5. PROSPECTS FOR BRINGING THOSE RESPONSIBLE TO JUSTICE

The environmental situation resulting from the destruction of the Kakhovka hydroelectric power station by the occupying forces falls squarely within the concept of the crime of ecocide. This concept exists in the legal framework of Ukraine, Russia and a dozen other countries. According to article 441 of the Ukrainian Criminal Code, which is part of section XX "Offences against peace, human security and international public order", ecocide is defined as the mass destruction of flora or fauna, the poisoning of the atmosphere or water resources, as well as other actions likely to cause an environmental disaster.<sup>39</sup>

International law does not yet recognise the concept of ecocide, does not provide a legal definition of it, and does not provide for the criminal responsibility of subjects of international law for this crime, although legal doctrine has long debated this issue and elaborated the main components of the crime in question.<sup>40</sup> Furthermore, an international multilateral group of experts under the auspices of "Stop Ecocide International"<sup>41</sup> has already drawn up and officially presented in June 2021 draft amendments to the Rome Statute of the International Criminal Court aimed at recognising ecocide as the fifth international crime, on a par with genocide, crimes

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<sup>37</sup> 'The Annual Conference of the Council of Europe Human Rights Education for Legal Professionals Network will be held on 6-7 July 2022' <<https://www.coe.int/en/web/kyiv/-/the-annual-conference-of-the-council-of-europe-human-rights-education-for-legal-professionals-network-will-be-held-on-6-7-july-2023>>.

<sup>38</sup> 'Joint Statement of Support for Ukraine at the 7th Ministerial Conference on Environment and Health' <[https://policy.trade.ec.europa.eu/news/ukraine-solidarity-meeting-joint-statement-2022-06-12\\_fr](https://policy.trade.ec.europa.eu/news/ukraine-solidarity-meeting-joint-statement-2022-06-12_fr)>.

<sup>39</sup> 'Criminal Code of Ukraine' <https://zakon.rada.gov.ua/laws/show/2341-14#top>.

<sup>40</sup> Guillermo Altares, 'Nace un delito contra el planeta: el ecocidio' (A crime against the planet is born: ecocide) *El País* (22 June 2021) <<https://elpais.com/clima-y-medio-ambiente/2021-06-22/nace-un-nuevo-delito-contra-el-planeta-el-ecocidio.html>>; Laurent Neyret, 'Réveiller l'écocide' (2022) 4 *Revue de science criminelle et de droit pénal comparé* <<https://www.youtube.com/watch?v=5Tw4gjrQLoM>>; Nataliia Malysheva, 'International environmental crimes committed by the Russian Federation on the territory of Ukraine and prospects of criminal liability for their commission' (2022) 1 *Journal of Kyiv Law University* 233-238.

<sup>41</sup> 'Stop Ecocide International' <<https://www.stopecocide.earth>>.

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against humanity, war crimes and the crime of aggression.<sup>42</sup> However, although no positive decision has yet been taken on this matter, the ecological disaster caused by the destruction of the Kakhovka hydroelectric dam already justifies calling into question the international criminal responsibility of the perpetrators of these acts. Such responsibility is provided for in a number of existing rules of international humanitarian law and the international law of armed conflict.

According to Article 53 of the Convention relative to the Protection of Civilian Persons in Time of War, any destruction by the Occupying Power of movable or immovable property, whether belonging individually or collectively to private persons or to the State or to other public institutions or to social or co-operative organisations, is prohibited, unless it is necessary for the conduct of military operations.<sup>43</sup>

The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)<sup>44</sup>, which entered into force on 5 October 1978 and to which the Russian Federation and Ukraine are parties on the basis of succession after the USSR, i.e. from 25 May 1978, has also become an international legal act regulating the relations concerned. In accordance with Article 1(1) of this Convention, each State Party undertakes not to resort to military or other hostile use of means of environmental modification having widespread, long-term or severe consequences as a means of destroying, injuring or causing damage to any other State Party.

The expression "means of modifying the environment" includes any means of altering, through intentional management, the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space (Article II). It is stipulated that the States Parties shall consult and cooperate with each other for the implementation of the Convention. If necessary, an advisory committee of experts is convened. A State Party may also appeal directly to the United Nations Security Council. Unfortunately, we see no prospects for such an appeal, nor for the implementation of Article V (3.4) of the Convention, which provides for the involvement of the UN Security Council in the assessment of evidence of a violation of the relevant prohibitions by a party, given that the offending State is a permanent member of the Security Council with a right of veto, which it abused on several occasions during this war.

The prohibition of criminal damage to the environment in the context of war crimes is also defined in the Rome Statute of the International Criminal Court. Article 8.2b (iv) of the ICC Statute provides for international criminal responsibility for violations of the laws and customs of war

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<sup>42</sup> 'Legal definition of the term ecocide, 2021' <<https://www.stop-ecocide.fr/definition-legale>>.

<sup>43</sup> 'Geneva Convention relative to the Protection of Civilian Populations in Time of War (Convention IV of 12 August 1949)' <<https://www.icrc.org/en/doc/resources/documents/misc/5fzfmt.htm>>.

<sup>44</sup> 'Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques' <<https://disarmament.unoda.org/fr/le-desarmement-a-geneve/convention-sur-linterdiction-dutiliser-des-techniques-de-modification-de-lenvironnement-a-des-fins-militaires-ou-toutes-autres-fins-hostiles>>.

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applicable in international armed conflict, such as intentionally carrying out an attack in the knowledge that it would cause incidental loss of life, injury to civilians or damage to civilian objects, or that it would cause significant, long-term and severe damage to the natural environment which would be clearly excessive in relation to a concrete, direct and clearly expected military advantage.<sup>45</sup>

Article 55 of Additional Protocol 1 to the 1949 Geneva Conventions also emphasises that, during hostilities, care must be taken to protect the natural environment against widespread, long-term and severe damage. Article 35(3) of the same Protocol explicitly prohibits the use of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term or severe damage to the natural environment and thereby to the health or survival of the population.<sup>46</sup>

As Thomas Obel Hancén points out, without knowing all the details of the long-term consequences of the rupture of the Kakhovka dam, it seems that this is a situation that can meet these three cumulative requirements. The damage that has already occurred is undoubtedly extensive, which generally means an area of at least several hundred square kilometres. As far as is known at this stage, they are also clearly serious. The long-term environmental impacts obviously cannot yet be fully assessed, but they will almost certainly be felt for many generations to come.<sup>47</sup>

It should also be noted that the provision concerning the crime analysed is specified in Article 56(1) of the same Protocol: installations containing dangerous forces, namely dams, dykes and nuclear power stations for the production of electric energy, shall not be the object of attack, even if they are military objectives, when such attack may cause the release of these forces and consequently cause severe losses to the civilian population. Other military objectives located on or near such works or installations shall not be made the object of attack when such attack may result in the release of dangerous forces and consequent severe loss of civilian life. Dams cannot therefore be legitimately targeted, despite the fact that Russia has turned the dam in question into a military base, along with the Zaporizhzhya nuclear power plant and many other critical infrastructures on the Crimean Peninsula and in other occupied territories.

We consider that the ecocide committed by the explosion of the Kakhovka hydroelectric power plant dam is a unique opportunity for the International Criminal Court to prove its ability to investigate environmental crimes. It is worth noting that this could be the ICC's first successful

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<sup>45</sup> 'Rome Statute International Criminal' <<https://www.icc-cpi.int/sites/default/files/Statut-de-Rome.pdf>>.

<sup>46</sup> 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977' <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>>.

<sup>47</sup> Thomas Obel Hancén, 'Could the Nova Kakhovka Dam Destruction Become the ICC's First Environmental Crimes Case?' Just Security (9 June 2023) <<https://www.justsecurity.org/86862/could-the-nova-kakhovka-dam-destruction-become-the-iccs-first-environmental-crimes-case/>>.

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experiment in this area. After all, even though the ICC Policy Paper on Case Selection and Prioritisation of 15 September 2016<sup>48</sup> mandates the Office of the Prosecutor to investigate such cases (paragraph 7), none of the States' applications to the Court regarding environmental crimes<sup>49</sup> have been accepted for prosecution so far.

With regard to the prospects for the investigation in question, some academics, in particular Thomas Obel Hancén<sup>50</sup> with reference to Marko Milanović<sup>51</sup>, express doubts about a vague interpretation of the term "attack" with regard to the part for which the dam should be recognised as "clean", given that within the meaning of Article 8.2 b (iv) and other articles of the Rome Statute on war crimes, the mining and destruction of one's own dam cannot be recognised as a war crime.

We categorically disagree with this argument, since occupation does not create property relations, the occupying power is prohibited from destroying or seizing the property of the occupied State<sup>52</sup>, which constitutes a war crime under Article 8 b (xiii) of the Rome Statute<sup>53</sup>. Secondly, according to Article 49 of Additional Protocol I to the Geneva Convention, the term "attack" means an act of violence against the enemy, whether in attack or in defence. The provisions of this Protocol relating to attacks apply to all attacks carried out in any territory, including national territory belonging to a party to the conflict but under the control of the adverse party.<sup>54</sup>

## 6. GENERAL ASPECTS OF JURISDICTION OVER ENVIRONMENTAL CRIMES COMMITTED DURING RUSSIAN ARMED HOSTILITIES IN UKRAINE

Ukrainian lawyers, lawyers from other countries, European and international organisations and environmental experts are actively working to ensure that all those responsible for environmental crimes in Ukraine, including the most serious – ecocide, that is held criminally responsible and compensated for the environmental damage caused by the war. This is not easy, as military operations are still underway in most of the territories where

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<sup>48</sup> 'Case Selection and Prioritisation Policy Paper 15 September 2016' <[https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf)>.

<sup>49</sup> 'Cambodia: International Criminal Court prosecutor urged to pursue land grab crimes' (16 March 2021) <<https://t.ly/BTarU>>. >.

<sup>50</sup> Thomas Obel Hancén, 'Could the Nova Kakhovka Dam Destruction Become the ICC's First Environmental Crimes Case?' Just Security (9 June 2023) <<https://www.justsecurity.org/86862/could-the-nova-kakhovka-dam-destruction-become-the-iccs-first-environmental-crimes-case/>>.

<sup>51</sup> Marko Milanović, 'The Destruction of the Nova Kakhovka Dam and International Humanitarian Law: Some Preliminary Thoughts' The Guardian (6 June 2023).

<sup>52</sup> 'Occupation and international humanitarian law: questions and answers' (ICRC) <<https://www.icrc.org/en/doc/resources/documents/misc/63td88.htm>>.

<sup>53</sup> 'Office for the Prevention of Genocide and the Responsibility to Protect' <<https://www.un.org/en/genocideprevention/>>.

<sup>54</sup> 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977' <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>>.



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the relevant offences were committed and continue to be committed, complicating the process of registration and assessment. At the same time, it is important to prove the undeniable causal link between the damage caused to nature and the actions of the Russian armed forces, to classify these offences and to determine the jurisdiction of the national or international institutions best able to examine the acts in question.

In this respect, it is very important to involve foreign experts in the process of recording, documenting, verifying and evaluating evidence of these crimes. That is why, on 20 September 2022, the Verkhovna Rada (Parliament) of Ukraine adopted an Appeal to the United Nations General Assembly, the United Nations Environment Programme, the European Parliament, the European Commission, the parliaments and governments of the Member States of the United Nations General Assembly, to set up a special environmental monitoring mission to record the environmental damage caused by the armed aggression of the Russian Federation on the territory of Ukraine.<sup>55</sup>

In response to this call, the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine was created, to which 43 States and the European Union have already acceded or expressed their intention to accede. In addition, European Parliament Resolution 2023/2739 of 15 June 2023 (paragraph 10) invites as many countries as possible to join the Register.<sup>56</sup> Determining the jurisdiction is of great relevance to the existence of legal grounds for applying to a particular jurisdiction and to the correct classification of criminal acts, as well as to the need to familiarise oneself with the requirements of a particular judicial body, the procedure for assessing evidence, damages and the enforcement of crimes committed there.<sup>57</sup>

First of all, it should be noted that the possibilities of national jurisdiction should not be ignored when deciding to prosecute perpetrators of environmental crimes, in particular the Russian Federation's crime of ecocide in Ukraine, even though in this case these possibilities are limited. On the one hand, the very wording of the crime of ecocide in Article 441 of the Ukrainian Criminal Code, which contains a large number of vaguely defined evaluative concepts, may present an obstacle. On the other hand,

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<sup>55</sup> 'Resolution of the Verkhovna Rada of Ukraine on the Appeal to the General Assembly of the United Nations, the United Nations Environment Programme, the European Parliament, the European Commission, Parliaments and Governments of the Member States of the General Assembly of the United Nations on the Establishment of a Special Environmental Monitoring Mission to Record the Environmental Damage Caused by the Armed Aggression of the Russian Federation on the Territory of Ukraine' (in Ukrainian)  
<<https://zakon.rada.gov.ua/laws/show/2594-20#n9>>.

<sup>56</sup> Resolution on the sustainable reconstruction and integration of Ukraine into the Euro-Atlantic community, 2023/2739(RSP)  
<[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2023/2739\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2023/2739(RSP))>.

<sup>57</sup> Nataliia Malysheva, 'Under which jurisdiction do environmental crimes committed as a result of the Russian Federation's armed aggression against Ukraine fall?' in Current issues of land, agricultural and environmental law in the context of modern challenges and threats (Kharkiv, 2023) (in Ukrainian).

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even if the specific perpetrators of the crime in question are identified and proven guilty, it will be difficult to obtain their extradition to Ukraine. We can therefore assume that the vast majority of judgements handed down here will be in absentia, which is not very effective.

There is no consensus in legal doctrine or in political and legal guidelines on the possibility of using international tribunals to bring to justice those responsible for the environmental crimes committed during Russia's military aggression against Ukraine in general and the crime of ecocide committed following the explosion at the Kakhovka hydroelectric power station in particular. Various options are being considered.

When considering the prospects of Ukraine as a State bringing an action against Russia before the International Court of Justice in the ecocide case, for example, it is proposed that an environmental component be added to the Ukraine v Russia case "On Charges of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide", which is currently before the ICJ.<sup>58</sup> We believe, however, that the prospects of this approach are not encouraging, since under the existing international legal framework, the negative impact on the environment is not covered by the concept of genocide and the environmental part of the dispute can be excluded at the "jurisdictional stage" of the proceedings, i.e. before the merits of the case are examined. Another possibility for examining environmental claims between Ukraine and the Russian Federation is the jurisdiction of the International Tribunal for the Law of the Sea, established in accordance with Annex VII of the United Nations Convention on the Law of the Sea<sup>59</sup>. Such a proposal is not without merit as regards the application to this body of the violation of Articles 192, 194, 195, 196, 198 of Part XII "Protection and Preservation of the Marine Environment" of the United Nations Convention on the Law of the Sea, following the destruction of the Kakhovka hydroelectric dam.

With regard to the prosecution of individuals responsible for international crimes against the environment, as indicated above, we should first consider the jurisdiction of the International Criminal Court (ICC), as a permanent body of international criminal justice since 1998, as well as the ad hoc Special Tribunal, like the Nuremberg Tribunal, which Ukraine is insisting on setting up, with the support of many other States and international and European organisations. It should be noted that the ICC Chief Prosecutor opened an investigation into Russian war crimes in Ukraine a week after the mass invasion. With regard to the inclusion of investigations into environmental crimes in the ICC's war crimes proceedings, it is very important that Ukraine actively participates in the formation of cases in this category, properly registered, executed and submitted in accordance with ICC procedure. The role of a special ad hoc International Criminal Tribunal,

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<sup>58</sup> 'Will the International Court of Justice hold the Russian Federation to international legal responsibility for environmental crimes committed in Ukraine?' (in Ukrainian) <<https://law.chnu.edu.ua/vidpovidalnisti-rosii-za-ekolohichni-zlochyny-v-ukraini/>>.

<sup>59</sup> 'International Tribunal for the Law of the Sea' <<https://www.itlos.org/en/main/ressources/>>.

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if established, should not be excluded. However, in any event, such an instrument would not be able to deal with international crimes of all categories. According to the position of the majority of experts and of the Parliamentary Assembly of the Council of Europe<sup>60</sup>, which we support, this tribunal should focus on the crime of aggression, bringing to justice first and foremost the highest political and military leaders of the aggressor State. Under no circumstances, for financial, legal, technical or other reasons, will this special court duplicate ICC proceedings in cases that are or will be investigated by that Court.

We, therefore, consider that Ukraine should use all appropriate jurisdictional instruments, both national and international, to ensure that the perpetrators of war crimes and the aggressor state are brought to justice. Emphasis should be placed on the preparation and submission of the case of ecocide resulting from the explosion of the Kakhovka hydroelectric power plant, as well as other environmental crimes committed by the Russian Federation in Ukraine, to the ICC under that Court's jurisdiction to investigate war crimes.

## 7. CONCLUSIONS

The explosion of the dam at the Kakhovka hydroelectric power station by the Russian Federation, which has had serious long-term and large-scale environmental consequences not only for Ukraine but also for all the states in the Black Sea region, has all the hallmarks of ecocide. This act has been officially recognized as such not only by Ukraine but also by several other states, as well as by the Council of Europe and the European Union.

Individuals directly responsible for this crime can already be prosecuted under Ukraine's national legislation, specifically under articles 441 ("Ecocide") and 438 ("Violations of the laws and customs of war") of the Ukrainian Criminal Code. At the same time, the scale of the dangerous ecological consequences of the Kakhovka hydroelectric dam explosion, affecting not only the environment of Ukraine but at least the states of the Black Sea region, elevates this crime to an international level and creates prospects for involving international jurisdictions in its investigation.

The authors of the article analysed all international jurisdictions to which the investigation of war crimes with environmental consequences may be transferred: the International Court of Justice, the International Tribunal for the Law of the Sea, an ad hoc International Special Tribunal (if established), and the International Criminal Court (ICC). Particular attention is paid to the ICC. Although the crime of ecocide as a fifth international crime is still being considered and has not yet been included in the Rome Statute of the ICC, the legal basis for this conclusion is provided by Article 8.2(b)(iv) of the Rome Statute of the ICC as an international war crime. For the ICC,

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<sup>60</sup> 'The political consequences of the Russian Federation's war of aggression against Ukraine: Council of Europe/Parliamentary Assembly. Resolution 2506 (2023), clause 18.4. Provisional version' <<https://pace.coe.int/en/files/32994/html>>.

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accepting this case, prosecuting it, and successfully investigating this crime can represent an unprecedented legal and political opportunity to prove for the first time that the ICC can prosecute environmental crimes committed during international hostilities.

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**AUTHORS' DECLARATION AND ESSENTIAL ETHICAL COMPLIANCES**

*Authors' Contributions (in accordance with ICMJE criteria for authorship)*

<i>Contribution</i>	<i>Author 1</i>	<i>Author 2</i>
Conceived or design the research analysis	Yes	No
Collected the data	Yes	Yes
Contributed to data analysis and Interpretation	Yes	Yes
Wrote the article	Yes	Yes
Critical revision of the article	Yes	No
Editing of the article	No	Yes
Supervision	Yes	Yes
Project Administration	Yes	No
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*Research involving human bodies or organs or tissues (Helsinki Declaration)*

The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

*Research involving animals (ARRIVE Checklist)*

The author(s) solemnly declare(s) that this research has not involved any animal subject (body or organs) for experimentation. The research was not based on laboratory experiment involving any kind animal. The contexts of animals not even indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of ARRIVE does not apply in cases of this study or written work.

*Research on Indigenous Peoples and/or Traditional Knowledge*

The author(s) solemnly declare(s) that this research has not involved any Indigenous Peoples as participants or respondents. The contexts of Indigenous Peoples or Indigenous Knowledge are only indirectly covered, through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

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### *Research involving Plants*

The author(s) solemnly declare(s) that this research has not involved the plants for experiment or field studies. The contexts of plants are only indirectly covered through literature review. Yet, during this research the author(s) obeyed the principles of the Convention on Biological Diversity and the Convention on the Trade in Endangered Species of Wild Fauna and Flora.

### *(Optional) Research Involving Local Community Participants (Non-Indigenous)*

The author(s) solemnly declare(s) that this research has not directly involved any local community participants or respondents belonging to non-Indigenous peoples. Neither this study involved any child in any form directly. The contexts of different humans, people, populations, men/women/children and ethnic people are only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

### *(Optional) PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses)*

The author(s) has/have NOT complied with PRISMA standards. It is not relevant in case of this study or written work.

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**Environmental Consequences of the Kakhovka H.P.P. Destruction in Ukraine:  
Challenge and Opportunity for International Justice**

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